



Written Statement of

Jason Straczewski
Group Vice President, Government Relations & Political Affairs
National Retail Federation

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Good afternoon, Senator Maroney and Representative Lemar. On behalf of the National Retail Federation, thank you for inviting us to appear before the working group. Today, I will address Connecticut's new consumer protections against surveillance pricing and explain how the new law will protect consumers while preserving beneficial discounts and loyalty programs. And I'll provide a suggestion to improve the law to deliver even more protection for the discounts that Connecticut consumers rely on every day to make goods more affordable.

No other industry or organization is closer to the consumer than retail. Every day, retailers serve millions of people, respond to community needs, and support the economy. That direct relationship gives retailers a clear understanding of the importance of consumer trust, protection, and fairness. Retail is highly competitive in Connecticut and across the United States. More than 600,000 retail businesses operate nationwide, alongside countless global e-commerce companies. Consumers can easily compare quality, price, selection, discounts, and loyalty programs before deciding where to find the best value.

Loyalty and savings programs are popular among consumers in Connecticut and across the country. The average U.S. consumer is enrolled in nine such programs. With the high cost of living a chief concern, consumers at every income level are using these programs to help manage household budgets. Retailers use them to offer relevant products and prices, communicate with customers, and build trust that can be difficult to restore once lost. Outside of loyalty and savings programs, consumers also look forward to discount offers based on their unique relationship with the retailer. These include discounts tailored to them to deliver savings on the goods they use every day.

Connecticut has recently enacted two significant sets of consumer protections: the Connecticut Data Privacy Act enacted in 2022, and the amendments adopted through HB 5563 and HB 5222 during the most recent legislative session.

I want to thank Senator Maroney and Representative Lemar for your leadership and thoughtfulness in crafting these new laws, and for meeting with Connecticut's retail community early and throughout the legislative process. The bill evolved considerably during the session, and the industry values its partnership with you on this issue. Together with the Connecticut Data Privacy Act, the new protections give consumers important control over access to, use of, correction of, and sharing of their personal information. Senator Maroney, thank you for your national leadership on consumer privacy and on creating careful and targeted protections against the deceptive use of data to increase the price of goods in Connecticut.

We agree that no consumer should be charged more for a specific product based on assumptions about that consumer drawn from their personal data, purchase history or perceived willingness or ability to pay more than the bona fide market price. Retail pricing practices are not driven by surveillance pricing tactics as defined in the new law.

Recent public discussion on the topic of surveillance pricing often conflates retail pricing with concerns drawn from practices used by businesses in other industries that operate under very different models. Those comparisons can result in an incorrect and misleading picture of retail pricing, confuse consumers, ignore competitive marketplace conditions, and end up harming retailers in Connecticut and other communities.

Technology and innovation are beneficial to consumers when they help retailers respond to consumer needs by offering more relevant products and more frequent savings on more items. Global e-commerce has expanded consumer choice and intensified the competition Connecticut retailers face each day. Retailers use technology and data to benefit consumers, not to work against them. Under the Connecticut Data Privacy Act, and 23 state privacy laws, consumers have greater information and control when deciding whether to share personal information with a retailer.

Vigorous competition, retailers' need to earn consumer trust, and clearly defined state laws all help protect consumers. In the current debate over surveillance pricing, however, technological capability is too often treated as proof of consumer deception. We have not seen empirical evidence or documented examples showing that retailers use these technologies and data to raise prices for individual consumers. Nevertheless, we strongly agree that surveillance pricing, as defined in Connecticut law, should be prohibited.

Retailers believe the new law largely protects beneficial discounts and can serve as a model for other states. In particular, the exemption in section (c)(2)(A) clearly allows retailers to offer discounts to retain customers, attract new customers, cross-sell products, or reengage lapsed customers. This language is easy for consumers and retailers to understand, and focuses the law's protections on actual consumer harm—not the beneficial uses of data to better serve consumers.

Retailers nevertheless have serious concerns about the loyalty-program provisions, particularly the unclear disclosure requirements in section (c)(2)(C). Loyalty and rewards programs are an important way for retailers to compete by offering discounts, rewards, relevant product recommendations, and other benefits that customers voluntarily choose to receive. Customers choose to enroll because they value these offers and rewards, while retailers use the programs to build and maintain customer relationships.

We fully support clear and conspicuous disclosure of loyalty-program terms and conditions, including disclosures about the use of personal data consistent with the Connecticut Data Privacy Act. Our concern with the new law prohibiting surveillance pricing, is that the requirement for a retailer to post its loyalty program’s “uniform terms and conditions” is unclear. The term “uniform” could be interpreted to limit or restrict how loyalty programs are structured, administered, or tailored to cater to varying customer behaviors and preferences. This interpretation, which may not reflect the legislative intent, could chill the right of Connecticut consumers to access these beneficial programs. It would require Connecticut retailers to consider the legal risk of continuing to offer loyalty rewards and discounts. Additionally, requiring retailers to post details about program discounts on their websites could also compel them to disclose proprietary pricing and marketing strategies to competitors. It would force retailers to weigh the disclosure of competitive proprietary strategies to continue to offer these discounts.

These provisions can be clarified without reducing meaningful transparency and protections for consumers. We recommend revising section (c)(2)(C)(iii) to require retailers or third-party delivery services to disclose clearly and conspicuously, on their websites and in language readily understandable by the average consumer, the terms and conditions governing program discounts and discounted prices. This approach would replace the law’s unclear requirement for “uniform” postings while preserving retailers’ ability to compete for a customer’s business and loyalty.

Conclusion

Retailers use data, marketplace observations, and personal information that consumers voluntarily share to provide personalized savings and discounts—not to impose price increases on individuals at amounts above the bona fide market price. Connecticut merchants must be able to serve each customer and compete for a sale, including by offering a personalized discount that earns the customer’s business and builds loyalty. And Connecticut consumers should continue to have the opportunity to benefit from competition in the retail industry as retailers offer discounts, markdowns and other savings. Using data to offer personalized savings benefits consumers; using it to impose a personalized price increase harms them. A retailer that engages in the latter risks both liability for a deceptive practice and irreparable damage to its reputation.

These discounts and loyalty programs save consumers money, help retailers drive sales, and support jobs. We look forward to continuing our partnership with the legislature to protect consumers while preserving the competitive discounts and loyalty programs they rely on every day. Thank you.